



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

MICHAEL F. EASLEY
GOVERNOR

LYNDO TIPPETT
SECRETARY

MEMO TO: Division Engineers
District Engineers
R/W & C/A Committee Members

FROM: Thomas C. Terry, Jr. *Thomas C. Terry, Jr.*
Highway Design Staff Engineer

DATE: February 10, 2006

SUBJECT: Revised Right of Way Disposal and Control of Access Review
Committee Operating Procedures

Attached are the revised and approved Right of Way Disposal and Control of Access Review Committee Operating Procedures that are now in effect. These procedures were last revised and approved in March of 2001. Please distribute this information to all applicable personnel within your area.

The revisions in the operating procedures are summarized as follows. The committee's review has been expanded to include control of access revisions on highway projects under construction. Also, since the Division of Highways reorganization in 2003, certain committee members that were within the former Design Services Unit have moved to the Roadway Design Unit. The procedures are being revised to include the addition of a representative from the Roadway Design Unit as a voting member on the committee. The Project Services Unit will continue to have a representative as a voting member on the committee.

Within the revised operating procedures, we have defined residue areas and listed the action to be taken if a property is deemed as residue. A residue area is defined as DOT owned property that is beyond the originally proposed right of way limits. The residue area was purchased in conjunction with settlement of the right of way acquisition claim. If the Division Engineer determines the requested area to be residue property, a review by the committee is not required. Requests for disposal of residue property must be submitted by the Division Engineer directly to the Right of Way Branch for processing. The Division Engineer will provide a recommendation in the letter of transmittal to the Right of Way Branch Manager.

In the NOTIFICATION - DENIALS section, we have expanded to include approvals. A copy of the approval memorandum sent from the Chairperson to the Manager of the Right of Way Branch will be forwarded to the appropriate Division Engineer. The Chairperson will also send a memorandum to the appropriate Division Engineer to explain the reasons for the denial. It is the Division Engineer's responsibility to notify the requesting party regarding the approval or denial.

In the NOTIFICATION - APPROVALS section, we have included all interstates, future designated interstates, and control of access associated with interstates. Control of access associated with interstates is defined as control of access within the vicinity of interstate interchanges or grade separations (vicinity is defined as approximately 1000 feet for interchanges and approximately 300 feet for grade separations.) A memorandum from the

MAILING ADDRESS:
NC DEPARTMENT OF TRANSPORTATION
HIGHWAY DESIGN BRANCH
1584 MAIL SERVICE CENTER
RALEIGH NC 27699-1584

TELEPHONE: 919-250-4001
FAX: 919-250-4245

WEBSITE: WWW.DOH.DOT.STATE.NC.US

LOCATION:
CENTURY CENTER COMPLEX
ENTRANCE A1
1000 BIRCH RIDGE DRIVE
RALEIGH NC

February 10, 2006

Chairperson will be sent to the State Highway Administrator requesting concurrence with the committee's recommended approval. Upon receipt of the State Highway Administrator's concurrence and/or concurrence with stipulations, a memorandum from the Chairperson will then be forwarded to the Federal Highway Administration requesting final approval of the committee's recommendation.

Furthermore, we have added notes regarding the expiration and revisions of committee approvals. If the right of way/control of access claim is not settled and recorded within two years of the approval date, the approval is no longer valid. If the site plan and/or Traffic Impact Analysis is revised, the approval is no longer valid and the request must be resubmitted.

As brought up recently at the Safety and Emerging Issues Subcommittee meeting of the Board of Transportation, we have also added a DENIALS - APPEAL section to clarify and simplify the requesting party's right to an appeal when their request is denied. If the requesting party has new information that addresses the committee's concerns, the Division Engineer may resubmit the request.

Also, we have updated the checklist that is completed within the Division. Added to the checklist is the question of whether or not the right of way acquisition claim for the requested area has been settled and we have also requested aerial photos of the area be included with the Division Engineer's submittal.

In revising these procedures, we have coordinated with the Federal Highway Administration, Preconstruction, Construction, and Operations Staff that are involved in this process. If you have any questions regarding the revised procedures, please contact Art McMillan or me in the Highway Design Branch Office.

TCT/tct

Attachments

cc/att: Len Sanderson, PE
John Sullivan, III
Steve Varnedoe, PE
Steve DeWitt, PE
Debbie Barbour, PE
Art McMillan, PE
John Williamson, Jr.
Kevin Lacy, PE
Victor Barbour, PE
Jay Bennett, PE

RIGHT OF WAY DISPOSAL AND CONTROL OF ACCESS REVIEW COMMITTEE

Operating Procedures

The Right of Way Disposal and Control of Access Review Committee acts on recommendations from the Division Engineer for right of way disposals and control of access revisions on all completed highway projects. The committee also reviews requests for control of access revisions on highway projects under construction. The committee normally meets on the second Tuesday of each month.

Committee composition is as follows:

Voting Members: Highway Design Branch Manager (1) - Chairperson
Operations (1)
Project Development and Environmental Analysis (1)
Project Services Unit (1)
Right of Way Branch (1)
Roadway Design Unit (1)
Traffic Engineering and Safety Systems Branch (1)

Non-Voting Members: Federal Highway Administration
North Carolina Department of Environment and
Natural Resources - (NCDENR)

NCDENR will only review actions that have potential to remove public access to waters of state or privately owned/managed lands (such as gamelands, parks, etc.)

The Division Engineer shall submit all items requiring committee action to the Committee Chairperson. The Chairperson must receive items at least two weeks in advance of the next monthly meeting in order to be included on the agenda.

The Roadway Design Unit prepares and distributes the agenda to committee members on the first Tuesday of each month. Agenda items that are deferred due to lack of sufficient information will remain on the agenda for a period of one year. If no action occurs within one year, the item will be removed from the active agenda. If activity on that specific agenda item occurs after one year, the Division Engineer must resubmit the request.

Requests by private parties for right of way disposals and/or control of access revisions should be made through the District Office. Upon receiving a request, the District Engineer should do the following:

- Determine if the lands or interest therein are defined as residue areas. A residue area is defined as DOT owned property that is beyond the originally proposed right of way limits. The residue area was purchased in conjunction with settlement of the right of way acquisition claim. After investigation by the District Engineer, the request for disposal of residue property will be sent to the Division Engineer for review. If the Division Engineer also determines the requested area to be residue property, a review by the committee is not required. Requests for disposal of residue property must be submitted to the Right of Way Branch for processing. The Division Engineer will provide a recommendation in the letter of transmittal to the Right of Way Branch Manager.
- Make requesting party aware of potential fees, costs, and enhancements (based upon current fair market value) involved should the request be approved.

RIGHT OF WAY DISPOSAL AND CONTROL OF ACCESS REVIEW COMMITTEE
OPERATING PROCEDURES

- Inform the requesting party of the approximate time frame and steps involved in processing the request.
- Determine requesting party's name, address, and phone number.
- Determine if requesting party is the owner of the adjacent property or an agent of the owner. If an agent, obtain the owner's name, address, and phone number.
- Determine exact location of requested action including existing and proposed site conditions.
- For control of access revisions, determine if requesting party has another means of access to the property.

After investigation by the District Engineer, the request (with all associated documentation, including plan sheets and aerial photos of the property) will be forwarded to the Division Engineer for submittal to the committee. The Division Engineer's letter of transmittal to the Chairperson should include a recommendation for approval or denial. (Note: The District and/or Division Office may deny any request at the local level.) If a request is denied at the local level, a review by the committee is not required. The Roadway Design Unit and the Highway Design Branch Staff Engineer will review the agenda items and, when necessary, will request additional information for the committee's benefit.

RIGHT OF WAY DISPOSALS

The committee will review each request as to its effect on the safety and operation of the state highway involved and for compliance with Section 23 CFR 710, Subpart D, and 23 CFR 771.117(d)(6). Specifically, the committee must determine the following:

- The lands or interest therein to be disposed of will not be needed for highway purposes in the foreseeable future.
- The right of way being retained is adequate under present day standards for the highway facility involved.
- The release will not adversely affect the highway facility or traffic thereon.
- The lands or interest therein to be disposed of are not suitable for retention in order to restore, preserve, or improve the scenic beauty and environmental quality adjacent to the transportation facility.
- The lands to be disposed of are not suitable for use for parks, conservation, recreational, and/or similar purposes.
- The lands to be disposed of are not being used for wetland or stream mitigation.

RIGHT OF WAY DISPOSAL AND CONTROL OF ACCESS REVIEW COMMITTEE
OPERATING PROCEDURES

- No adverse environmental effects are associated with the disposal.
- If applicable, approval will be subject to accommodating existing utilities.

CONTROL OF ACCESS REVISIONS

The committee studies requests for breaks in control of access, relocation of access, or reduction in control of access very closely. Control of access is the single most important factor affecting the safety and operation of highways. Existing control of access becomes more critical relative to public safety and traffic operation as time passes and traffic volumes grow; therefore, there should be substantial and justifiable reasons for consideration of control of access revisions. Requests for changes in control of access will be evaluated both in terms of the effect on the highway system and the effect on the adjacent and/or nearby property and must be of value to the traveling public. Appropriate capacity analysis and design studies shall be completed (by the requesting party) to fully evaluate impacts on existing and proposed conditions.

The committee must determine that there will be no adverse environmental effects associated with the proposed control of access revision. To the extent possible, projected land uses will be considered in evaluating the environmental effects. When appropriate, the committee will coordinate its review with local planning jurisdictions for their recommendations.

Revisions to control of access should be in compliance with 23 CFR 710, Subpart D, and 23 CFR 771.117(d) (7).

NOTIFICATION - APPROVALS/DENIALS

A copy of the approval memorandum sent from the Chairperson to the Manager of the Right of Way Branch will be forwarded to the appropriate Division Engineer. The Chairperson will also send a memorandum to the appropriate Division Engineer to explain the reasons for the denial. It is the Division Engineer's responsibility to notify the requesting party regarding the approval or denial.

DENIALS - APPEAL

If the requesting party has new information that addresses the committee's concerns, the Division Engineer may resubmit the request.

NOTIFICATION - APPROVALS

For all Requests Except Those Involved with Interstates, Future Designated Interstates, and C/A Associated with Interstates*

1. A memorandum from the Chairperson is sent to the State Highway Administrator requesting concurrence with the committee's recommended approval.

**RIGHT OF WAY DISPOSAL AND CONTROL OF ACCESS REVIEW COMMITTEE
OPERATING PROCEDURES**

2. Upon receipt of the State Highway Administrator's concurrence and/or concurrence with stipulations, a memorandum from the Chairperson will be forwarded to the Manager of the Right of Way Branch. The memorandum will notify the Right of Way Branch of the approval and request they proceed with the necessary steps to implement the approved request. The appropriate Division Engineer and committee members will be sent a copy of this approval memorandum.
 3. If the right of way/control of access claim is not settled and recorded within two years of the approval date, the approval is no longer valid.
 4. If the site plan and/or Traffic Impact Analysis is revised, the approval is no longer valid and the request must be resubmitted.
- * Control of access associated with interstates is defined as control of access within the vicinity of interstate interchanges or grade separations (vicinity is defined as approximately 1000 feet for interchanges and approximately 300 feet for grade separations.)

Interstates, Future Designated Interstates, and C/A Associated with Interstates*

1. A memorandum from the Chairperson is sent to the State Highway Administrator requesting concurrence with the committee's recommended approval.
 2. Upon receipt of the State Highway Administrator's concurrence and/or concurrence with stipulations, a memorandum from the Chairperson is sent to the Federal Highway Administration requesting final approval of the committee's recommendation.
 3. Upon receipt of the Federal Highway Administration's concurrence and/or concurrence with stipulations, a memorandum from the Chairperson will be forwarded to the Manager of the Right of Way Branch. The memorandum will notify the Right of Way Branch of the approval and request they proceed with the necessary steps to implement the approved request. The appropriate Division Engineer and committee members will be sent a copy of this approval memorandum.
 4. If the right of way/control of access claim is not settled and recorded within two years of the approval date, the approval is no longer valid.
 5. If the site plan and/or Traffic Impact Analysis is revised, the approval is no longer valid and the request must be resubmitted.
- * Control of access associated with interstates is defined as control of access within the vicinity of interstate interchanges or grade separations (vicinity is defined as approximately 1000 feet for interchanges and approximately 300 feet for grade separations.)

**DISPOSALS AND CONTROL OF ACCESS REVISIONS FOR LESS THAN FAIR MARKET VALUE
(ENHANCEMENT VALUE)**

Where federal funds participated in the original right of way acquisition, 23 U.S.C. 156 requires that the state charge fair market value or rent for

**RIGHT OF WAY DISPOSAL AND CONTROL OF ACCESS REVIEW COMMITTEE
OPERATING PROCEDURES**

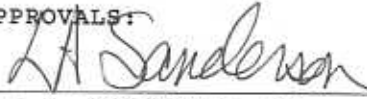
the use or disposal of real property interests, including access control. The Federal Highway Administration may approve an exception to this requirement in the following situations:

1. When the committee concludes that an exception is in the overall public interest for social, environmental, or economic purposes; nonproprietary governmental use; or uses under 23 U.S.C. 142(f), Public Transportation.
2. Use by public utilities in accordance with 23 CFR part 645.
3. Use by railroads in accordance with 23 CFR part 646.
4. Use for bikeways and pedestrian walkways in accordance with 23 CFR part 652.
5. Use for transportation projects eligible for assistance under Title 23 of the United States Code.

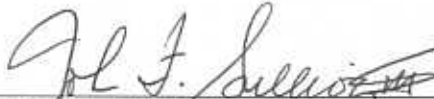
All requests for exceptions to charging fair market value will be forwarded to the Federal Highway Administration for approval and will give the reasons for the recommended exception.

The deed transferring the property to other agencies at less than fair market value shall provide for reversion of the property for failure to continue public ownership and use.

APPROVALS:



Len A. Sanderson, PE
State Highway Administrator



John F. Sullivan, III
FHWA Division Administrator

Right of Way Disposal
and/or
Control of Access Revision

Committee meets second Tuesday of each month ❖ Agenda deadline: 2 weeks prior to meeting.

1. Name and address of requesting party

2. Is requesting party the adjacent property owner? _____ Yes _____ No

3. Name of adjacent property owner(s) (if other than requesting party)

4. Type of Request: _____ Right of Way Disposal
_____ New Access Point
_____ Control of Access Revision

5. Intended Land Use: _____

6. County: _____ City/Town: _____

7. Route: _____ At/Near: _____

Project Information

8. Project Phase: _____ Planning _____ Design
_____ Construction _____ Completed

9. Has R/W claim for the requested area been settled? _____ Yes _____ No

T.I.P. No. _____

State Project No. _____

F.A. Project No. _____

Station(s) _____

10. Posted Speed(mph) _____

11. Average Daily Traffic _____ Year _____ (If available)

12. Do you anticipate problems with/or are the following involved?

_____ Wetlands

_____ Sight Distance

_____ Traffic Signals

_____ Environmental Permits Required

_____ Bridges/Culverts

13. Is a municipality involved? _____ Yes _____ No

(If yes, municipality recommendations) _____

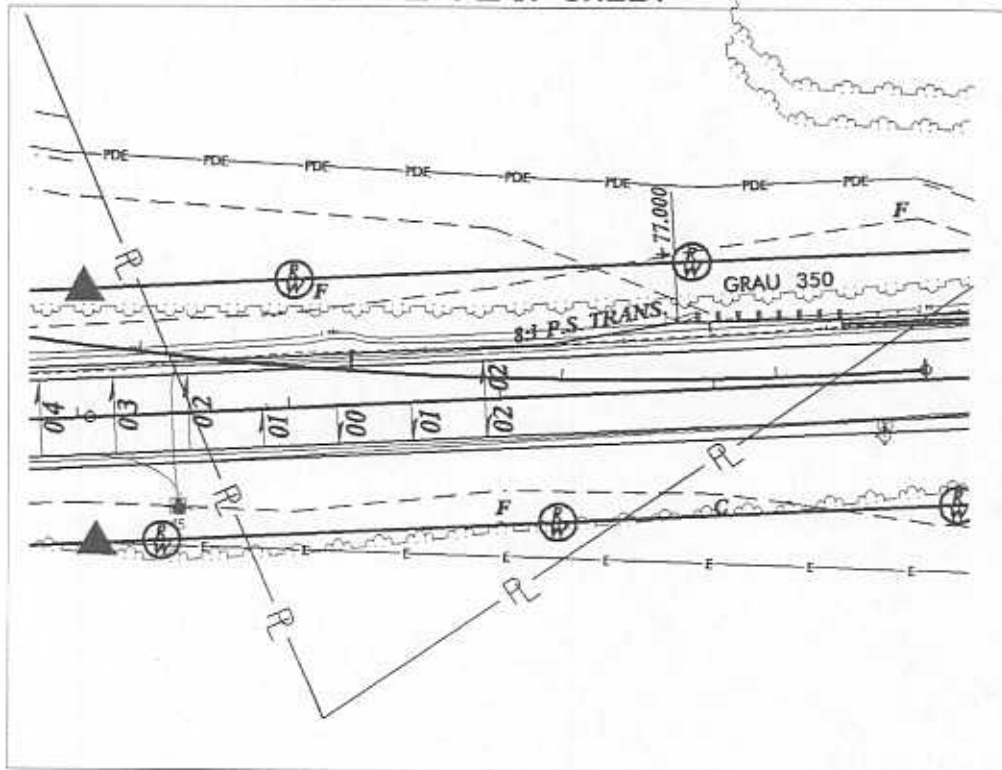
14. Provide aerial photos of the requested area.

15. Show station(s) and offset(s) for requested area on plan sheet.
(Please do not send a partial copy of plan sheet.)

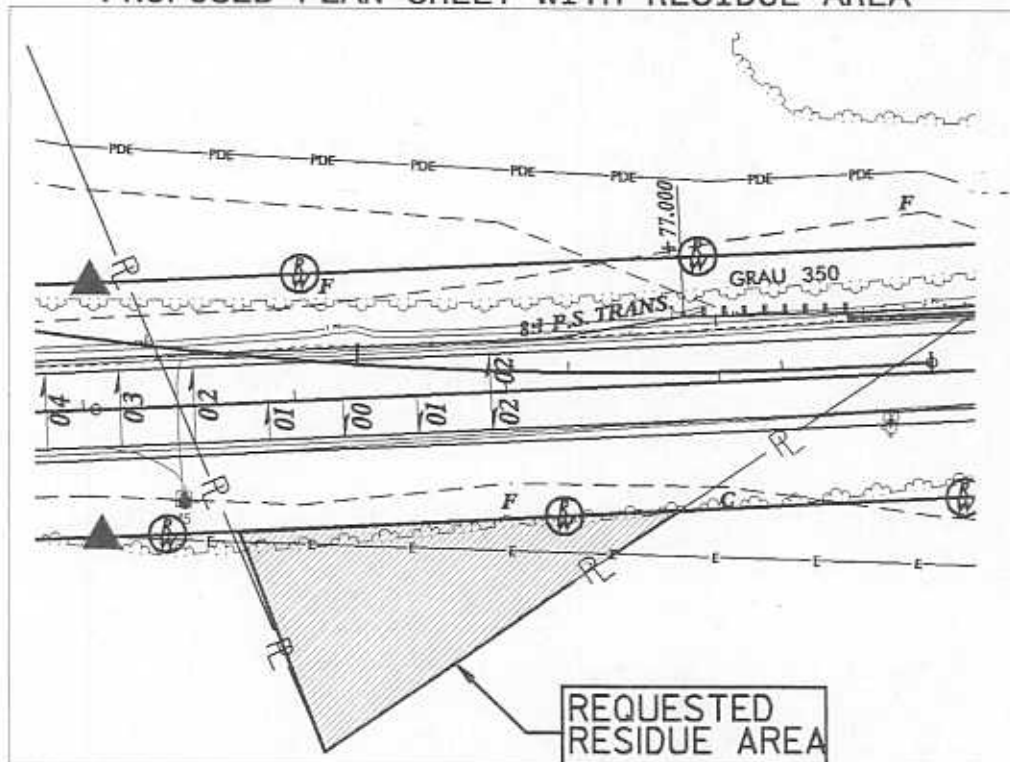
RESIDUE AREA

RESIDUE AREA IS DEFINED AS DOT OWNED PROPERTY THAT IS BEYOND THE ORIGINALLY PROPOSED RIGHT OF WAY LIMITS. THE RESIDUE AREA WAS PURCHASED IN CONJUNCTION WITH SETTLEMENT OF THE RIGHT OF WAY ACQUISITION CLAIM. REQUESTS FOR DISPOSAL OF RESIDUE PROPERTY MUST BE SUBMITTED BY THE DIVISION ENGINEER DIRECTLY TO THE RIGHT OF WAY BRANCH MANAGER (JOHN WILLIAMSON) FOR PROCESSING.

ORIGINAL PLAN SHEET



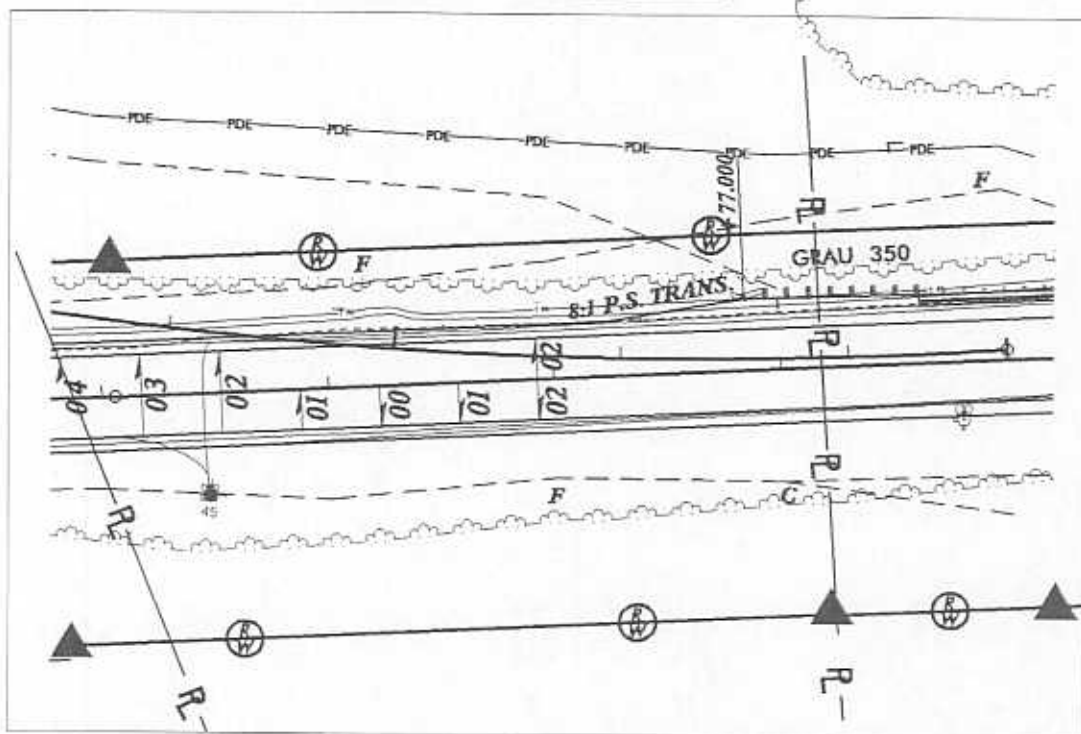
PROPOSED PLAN SHEET WITH RESIDUE AREA



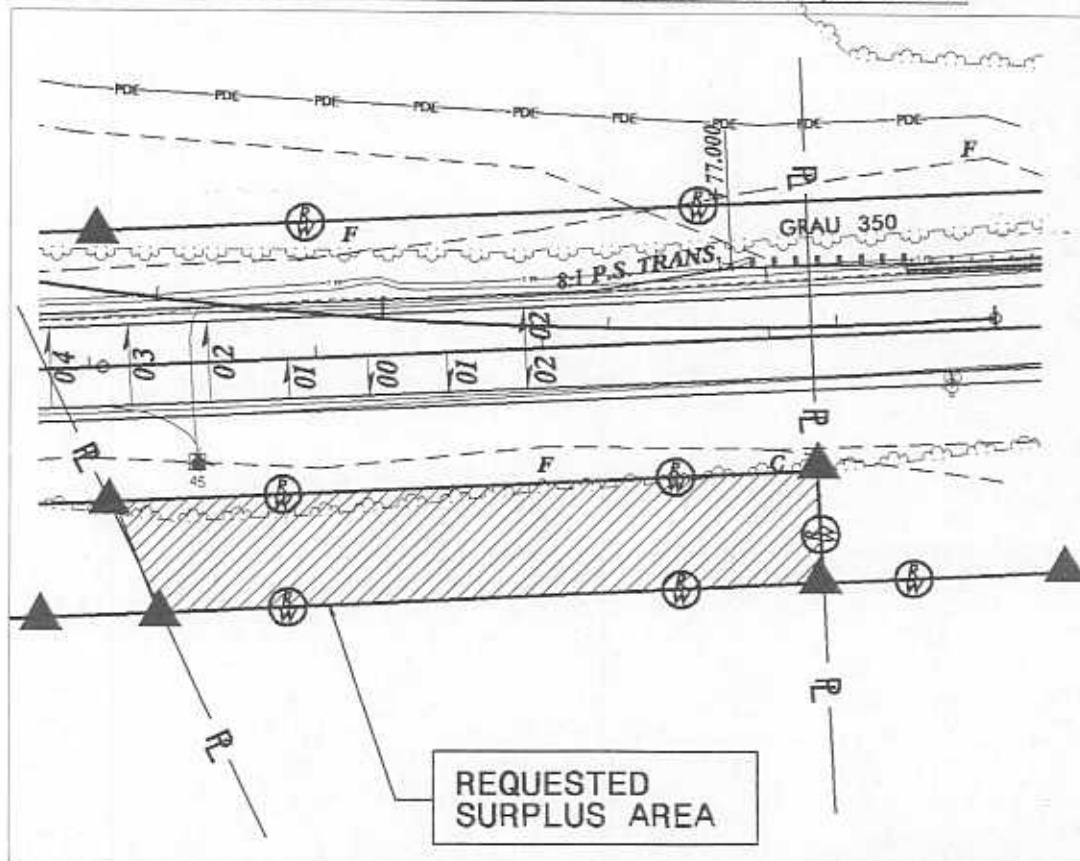
SURPLUS RIGHT OF WAY AREA

SURPLUS RIGHT OF WAY AREA IS DEFINED AS DOT OWNED PROPERTY THAT IS WITHIN THE ORIGINALLY PROPOSED RIGHT OF WAY LIMITS. REQUESTS FOR DISPOSAL OF SURPLUS RIGHT OF WAY MUST BE SUBMITTED BY THE DIVISION ENGINEER TO THE RIGHT OF WAY DISPOSAL AND CONTROL OF ACCESS REVIEW COMMITTEE CHAIRPERSON (ART McMILLAN) FOR REVIEW.

ORIGINAL PLAN SHEET



PROPOSED PLAN SHEET WITH SURPLUS R/W AREA



Denial Memo from
Division Engineer to
Requesting Party



EXAMPLE

STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

MICHAEL F. EASLEY
GOVERNOR

LYNDO TIPPETT
SECRETARY

Date _____

Name & Address of
Requesting Party _____

Dear _____:

The North Carolina Department of Transportation (NCDOT) has completed its review of your request to _____

_____. The NCDOT has determined that your request is denied due to _____

(Insert details from Art McMillan's denial memo to the Division Engineer)

I regret the NCDOT could not give a favorable response to your request. If you would like additional information regarding our decision, please contact me.

Sincerely,

_____, P.E.
Division Engineer

cc: Steve Varnedoe, P.E., Chief Engineer - Operations
Art McMillan, P.E., State Highway Design Engineer
_____, District Engineer
_____, Division Right of Way Agent

Approval Memo from
Division Engineer to
Requesting Party



EXAMPLE

STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

MICHAEL F. EASLEY
GOVERNOR

LYNDO TIPPETT
SECRETARY

Date _____

Name & Address of
Requesting Party _____

Dear _____:

The North Carolina Department of Transportation (NCDOT) has completed its review of your request to _____

_____. The NCDOT has granted approval for _____
_____ subject to the following:

- If the right of way/control of access claim is not settled and recorded within two years of the (insert approval date), the approval is no longer valid.
- If the site plan and/or Traffic Impact Analysis is revised, the approval is no longer valid and the request must be resubmitted.
- _____
(Insert conditions from Art McMillan's approval memo to the
Right of Way Branch Manager, John Williamson) _____
- _____

Please let me know if you have any questions or need further information.

Sincerely,

_____, P.E.
Division Engineer

cc: Steve Varnedoe, P.E., Chief Engineer - Operations
Art McMillan, P.E., State Highway Design Engineer
_____, District Engineer
_____, Division Right of Way Agent